

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

RE: Petition of VASG for Declaratory Ruling to the Director of the Rhode Island Department of Environmental Management Regarding the DVI/Dowling Village Project in North Smithfield, Rhode Island

DECLARATORY RULING

I. INTRODUCTION

On or about October 31, 2008, the Rhode Island Department of Environmental Management (“DEM”) received a Petition for Declaratory Ruling to review the surface and groundwater impacts associated with the proposed Dowling Village mixed-use retail development in North Smithfield, Rhode Island (the “Petition”). The Petition was submitted by the Valley Alliance for Smart Growth, Inc. (“VASG”), a Rhode Island non-profit corporation, whose members live and/or work in the Blackstone Valley, including North Smithfield and Woonsocket and in the areas directly abutting and/or impacted by the proposed Dowling Village mixed-use retail development project (the “Dowling Village project”). The application to alter freshwater wetlands for the proposed Dowling Village project was submitted by Bucci Development, Inc. and DVI, LLC (the “Applicant”).

The Petition was submitted to DEM pursuant to R.I.G.L. §42-35-8, which states, “each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions have the same status as agency orders in contested cases.” DEM reviewed the Petition in accordance with Rule 6.00 of the Administrative Rules of Practice and Procedure for the Department of Environmental

Management (the “Administrative Rules”), which requires that the Director of DEM consider the Petition and any documents submitted in support or opposition of the Petition.

Following the submittal of the Petition, DEM held a public hearing on March 5, 2009 at DEM. The public hearing was scheduled and conducted in accordance with Rule 6.00(c)(4) of the Administrative Rules because the Director of DEM determined that “widespread public interest” existed in the issues raised by VASG in its Petition. The widespread public interest was demonstrated by numerous letters and other documents addressing environmental impacts of the Dowling Village project. During the public comment period, which ended on March 6, 2009, DEM received thirteen letters and/or documents from various parties. Four of the documents were submitted by either VASG or by the Applicant, pursuant to a request for an extension of time to submit comments past the deadline.

According to Rule 6.00(c)(4) of the Administrative Rules, the Director of DEM must promptly issue a declaratory ruling after the conclusion of the public hearing. In this case, however, VASG and the Applicant agreed to meet at DEM on April 8, 2009 to discuss changes to the Dowling Village project as well as to discuss the contested issues. During that meeting, the parties agreed that the request for a declaratory ruling in the Petition would be stayed, pending the outcome of discussions between the parties. This Declaratory Ruling is now being issued, following the request of VASG.

II. VASG’S PETITION

The VASG petitioned DEM for a declaratory ruling on the stormwater discharges from the Dowling Village project, as follows:

1. The proposed Dowling Village stormwater discharges are subject to and must comply with the State Antidegradation Regulations; and
2. The proposed Dowling Village must obtain a Rhode Island Pollution Discharge Elimination System ("RIPDES") permit for its stormwater discharges to the waters of the State; and
3. The Dowling Village project is required to obtain an Order of Approval from DEM for its subsurface disposal of stormwater into the groundwaters of the State in accordance with Section 6 of the DEM's Underground Injection Control Program Rules and Regulations ("UIC Regulations").

The subject of VASG's Petition and the associated supporting materials is the Applicant's Wetland Permit No. 07-0236 issued on June 16, 2008, and the revised engineering plans and supporting documents associated with the Applicant's Request to Modify Freshwater Wetlands Permit for the Dowling Village project, Application No. 07-0236, submitted to DEM on May 26, 2009. Following the submittal on May 26, 2009, VASG filed its Further Supplement to its Petition for Declaratory Ruling on or about July 3, 2009 with DEM (the "Supplement"). The Supplement requested that DEM review the revised engineering plans and supporting documents in light of the original Petition.

In addition, the Applicant recently submitted revised engineering plans and supporting documents dated October 23, 2009 associated with the Applicant's Request to Modify Freshwater Wetlands Permit for Dowling Village that included new scientific and technical documentation and engineering plans for Phases II, III and IV including a pre-construction and post-construction stormwater pollutant loading analysis. Following the submittal on October 23, 2009, VASG filed a request that DEM incorporate by reference the Petition, comments and supplemental documents previously submitted by the

Applicant, including the revised plans and supporting documents submitted by the Applicant through and including October 23, 2009.

III. DECISION

The aforementioned revised engineering plans and supporting documents dated October 23, 2009, prove to the satisfaction of the Director of DEM, that the specific pollution controls and/or other mitigation measures and best management practices (“BMPs”) will ensure that the proposed stormwater discharges from Dowling Village from Phases II, III and IV to the waters of the State will not violate DEM’s Water Quality Regulations and the Antidegradation Provisions contained therein; in that:

1. The proposed stormwater discharges containing pollutants will not cause a significant water quality degradation of the high quality receiving waterbodies, including, but not limited to Booth Pond, for the pollutants which cause the receiving waterbodies to be designated as a high quality water; and
2. The proposed stormwater discharges containing pollutants will not cause a significant degradation of the existing water quality necessary to protect the characteristics for which the following water bodies were designated as special resource protection waters (“SRPW”) of the State: Woonsocket Reservoirs #1, and Crookfall Brook; and
3. The proposed stormwater discharges containing pollutants will not cause an impairment to the existing uses nor impair the attainment of designated uses of the receiving waterbodies; and
4. The proposed stormwater discharges are not likely to result in additional degradation of water quality of the section of the Blackstone River, (section RI0001003R-01A of the State 303d List of Impaired Waters) which is already below the water quality standard assigned to such waters; and
5. The proposed surface water discharges associated with Phase IV (Pond

I, UDB-P and RG- M) represent significant contributors of pollutants and, in accordance with RIPDES Rule 10, require application for coverage under an individual RIPDES permit.

Based on the revised engineering plans, supporting documents, comments received during the public hearing and comment period, stormwater pollutant loading analysis and the findings of the Director of DEM, the Applicant's Request to Modify Freshwater Wetlands Permit for the Dowling Village project, Application No. 07-0236, was approved on October 29, 2009 (the "Revised Permit"). The specific pollution controls and/or other mitigation measures and BMPs are intended to ensure that the stormwater discharges from Dowling Village to the waters of the State do not violate DEM's Water Quality Regulations and the Antidegradation Provisions contained therein. The pre-construction and post-construction water quality monitoring and reporting requirements associated with the Revised Permit are also intended to ensure that the design intent of the stormwater controls and treatment systems on stormwater discharges is achieved.

The Applicant applied for and received an Order of Approval dated November 4, 2009 from the DEM, for its subsurface disposal of stormwater into the ground waters of the State for the subject project in accordance with Section 6 of DEM's UIC Regulations.

Further details of DEM's analysis of the Dowling Village project can be reviewed in the Applicant's Wetland Permit File No. 07-0236, located at the DEM offices at 235 Promenade Street, Providence, RI 02908, at the Office of Customer and Technical Assistance.

IV. CONCLUSION

In accordance with Rule 6.00(c)(1) of the Administrative Rules, the Director of DEM considered the Petition and all documents submitted in support or opposition thereof, and hereby makes this Declaratory Ruling that:

1. The Dowling Village project's stormwater discharges are subject to and must comply with the State Antidegradation Regulations; and
2. The Applicant must obtain a RIPDES permit for its stormwater discharges to the waters of the State for Phase IV of the Dowling Village project; and
3. The Dowling Village project was required to obtain an Order of Approval from DEM for its subsurface disposal of stormwater into the groundwaters of the State in accordance with Section 6 of the DEM's UIC Regulations.

Pursuant to Rule 6.00(d) of the Administrative Rules, the public file containing this and all other Declaratory Rulings is maintained and available for review at the DEM offices at 235 Promenade Street, Providence, RI 02908, within the Administrative Adjudication Division.

RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

By its Director,



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CERTIFICATION

I hereby certify that I caused a true copy of the within Declaratory Ruling to be forwarded via regular mail, postage prepaid on this 20th day of November, 2009, to:

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